

**Minutes of the Roundtable**

**Seated at the moderated discussion table:**

1. Secretary of State Sam Reed
2. Rebecca Sherrell, *OSOS, Charities Program Manager*
3. Mike Ricchio, *OSOS, Director of Corporations*
4. Shane Hamlin, *OSOS, Legislative Liaison*
5. Donna Christensen, *Washington State Catholic Conference*
6. Carol Lewis, *Philanthropy Northwest*
7. Alaric Bien, *Chinese Information and Service Center*
8. Judy Andrews, *Gottlieb, Fisher, and Andrews*
9. Chris Charbonneau, *Planned Parenthood*
10. Putnam Barber, *Executive Alliance*
11. Dennis Smith, *United Way Snohomish County*
12. Sharon O'Donnell, *Bader Martin P.S.*
13. D. David Brown, *Pacific Northwest Ballet*
14. Cory Sbarbaro, *Nancy Bell Evans Center, University of Washington*

**Roundtable convened.**

**Introduction by Josephine Tamayo Murray, Executive Director of Catholic Community Services, Seattle** welcomes all parties and makes opening comments.

*Floor is given to Secretary of State, Sam Reed.*

**Secretary of State Sam Reed** thanks attendees for joining in the discussion about the legislation. He also thanks Put Barber and Josephine Tamayo Murray for their coordination.

Secretary Reed states the goal of the legislation is to help nonprofit organizations that fundraise from the public improve their accountability and transparency

Secretary Reed notes that all parties are in agreement that improving accountability is positive; the discussion today is meant to explore how to go about improving accountability. He notes that the nonprofit sector is very important to the State of Washington. The contributions that the sector makes to Washington's communities cannot be underestimated.

Secretary Reed notes that events such as September 11 and hurricane Katrina raised awareness of fraudulent activity. Recent natural disasters have also raised the awareness about how public charitable giving is conducted. He notes that considering these events, the Office of the Secretary of State was prompted to think about how charitable giving in Washington State should be done. He commends Washington State for being a leader in this field, not waiting for something negative to happen to take action.

In reviewing the current legislation, Secretary Reed notes that the draft bill proposes the following changes:

1. Streamlining the requirements for registration

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2. clarify definitions, for example who needs to register and who is exempt
3. improve accountability and transparency

Additionally, Secretary Reed notes that the Office of the Secretary of State is also hoping to increase educational resources for charity and nonprofit organizations, and improve the relationship with the Attorney General's Office on matters related to enforcement.

*Floor is given to Shane Hamlin, Legislative Liaison, OSOS*

**Shane Hamlin (OSOS)** thanks attendees and encourages attendees to be honest and frank in the roundtable discussion about how to increase public trust. He notes that minutes from the roundtable will be posted on the Office of the Secretary of State's Charities Program website (<http://www.secstate.wa.gov/charities/>), where attendees can also find the bill and make additional comments. He informs attendees that after the last roundtable in August, the Office of the Secretary of State is hoping to convene individuals from each roundtable to discuss the process and a report summarizing the roundtables will also be created.

*Floor is given to Mike Ricchio, Director of Corporations Division, OSOS*

**Mike Ricchio (OSOS)** thanks attendees for joining the roundtable discussion. He notes that the roundtable is very important for the Office of the Secretary of State. The aim of the roundtable is to get a variety of feedback from members of the sector in order to serve the public and the sector better.

Mike Ricchio responds to the concern that this draft legislation is the "Sarbanes-Oxley for the nonprofit sector," indicating that is not the intent of the legislation. He emphasizes that the Office of the Secretary of State has operated under the principal of do no harm, to continue and improve upon the public trust that the sector has built.

In a regulatory role, the Office of the Secretary of State is focused on organizations that solicit more than \$25,000 in funds from the public, and organizations that are not "religious" in nature.

He notes that in the last two roundtables [in Tacoma and Bellingham], attendees expressed a keen interest in good governance practices and public education. He states that while these two topics are not covered in the bill, the Office of the Secretary of State has certainly noted the concerns, and also noted that the topics covered in the bill are inextricably linked to issues of public education and good governance practices.

**Mike Ricchio (OSOS) begins discussing the draft legislation:**

**1. Pg 4, line 13: Definition of Religious Activities**

**Mike Ricchio** notes that the definition of religious activities is important to address because there is a lot of confusion about whether such organizations are required to register. The unscrupulous argue they are exempt by claiming a religious purpose. He notes that the purpose of this section is to draw a brighter line in defining who is required to register, and who qualifies as an exempt organization.

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He notes that lines 16 and 17 were added in hopes to make the distinction clearer. Mike Ricchio asks the attendees for their input.

**Donna Christensen (Washington State Catholic Conference)** acknowledges that work done to improve the language. She expresses concern over whether this language will help the Office of the Secretary of State reach the goal of clearer definition. She offers the aid of her organization to work with the Office of the Secretary of State to create a better definition.

**Judy Andrews (Gottlieb Fisher and Andrews)** asks if the Office of the Secretary of State has thought of adopting Rules that would establish factors that would be used to clarify or implement the statutes, so that the Office of the Secretary of State knows when religion is being practiced.

**Mike Ricchio (OSOS)** responds that the Office of the Secretary of State has the authority to make rules. He clarifies that text written in the bill that is not underlined already appears in the bill. He emphasizes that the Office of the Secretary of State would like to make it easier for religious organizations to register. He notes that because the office does not have expertise in this area, thoughts and comments from attendees are valued.

**2. Pg. 6, line 5: Audit Requirement**

**Mike Ricchio (OSOS)** notes trouble with the term “audit,” stating that the term was chosen because it was the word that the Independent Sector Report recommended. He also informs attendees that when the Office of the Secretary of State discussed the legislation with the Washington Society of CPAs, the Office learned more about the complexities of an audit and the cost associated with conducting an audit. He notes that at that time, the Office of the Secretary of State realized that the intention is to have an independent third party review, rather than an audit.

He also notes that the legislation recommends a threshold of \$1 million based on the total revenue of registering organizations in Washington State. The \$1 million threshold is also what the Independent Sector report recommended. He notes that sixteen (16) states currently have a financial review requirement; California has the highest threshold at \$2 million and the national median is approximately \$425,000 for those using the total revenue model.

**Cory Sbarbaro (Nancy Bell Evans Center)** asks for Mike Ricchio to clarify. He notes that Mike Ricchio has mentioned “total solicited funds,” but the bill states “total revenue.”

**Mike Ricchio (OSOS)** clarifies that the wording would change and, because of feedback from previous roundtables, “total solicited funds” is a more appropriate term.

**Sharron O'Donnell (Bader Martin, P.S.)** expresses encouragement over changing the term audit. She also encourages thinking about what the term “audit” instills in the donating public. She suggests the possibility that the audit level of service be addressed in rule rather than law. The timeline for implementation in the bill is fairly quick; organizations that have not had audits

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previously may have difficulty getting their financial system in order that quickly to have an audit completed.

**Mike Ricchio (OSOS)** asks Sharon O'Donnell to clarify the timeline she mentioned.

**Sharron O'Donnell (Bader Martin, P.S.)** describes the timeline, suggesting that the bill would have gone into place in the fiscal year of 2008. She emphasizes that getting the systems in place in smaller organizations would be difficult.

**Chris Charbonneau (Planned Parenthood)** does not find it compelling that sixteen (16) states came up with the wrong number [for the threshold]. She expresses concern, as a mentor for small organizations, about the scale of the legislation. She notes that all the transactions in the entire sector do not make a single Enron transaction. She also encourages the Office of the Secretary of State to consider that having a firm perform an audit is merely a fraction of the costs to prepare for an audit. She recommends \$3-5 million threshold for the total assets; \$1 million is a good threshold for fundraised, funds with the idea to protect giving public.

**Dennis Smith (United Way Snohomish County)** notes that he is pleased that these roundtables are happening. He comments on the issue of an "audit;" noting that any organization that gets funds from United Way are required to do a financial review – the United Way seeks an audit from the organization, but accepts a financial review if an audit cannot be afforded by the organization. He gives the United Way's support for an audit requirement; he also acknowledges that a \$1 million threshold is reasonable for the United Way system as well. He encourages focusing on dollars raised, not total revenue. He encourages the audit requirement as a way to increase good and best practices. Dennis Smith also supports requiring the board to sign off on financial statements to increase board accountability.

**Chris Charbonneau (Planned Parenthood)** asks that the IRS Form 990 be kept as a foundation document for gathering information, since this form is already used as a cornerstone for nonprofit organizations.

**Carol Lewis (Philanthropy Northwest)** suggests that the audit requirement is fundamentally not how to reach the goal of accountability. She suggests that there is no connection between state regulations and fraud. She notes that Enron was audited. She notes that it is important to back up and ask what the purpose of the legislation is. She also notes that it never occurred to her that the legislation was a defensive action to bad federal legislation. She also suggests establishing a cycle of audit and financial reviews; audit every three years, reviews in the non-audit years.

**Secretary of State Sam Reed** asks Carol Lewis if she is suggesting that the board should not sign off on financial statements and that a financial statement review is not necessary.

**Carol Lewis (Philanthropy Northwest)** clarifies that she is not suggesting the absence of good governance; she wonders if a state requirement will really deliver good governance. She notes

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that there are many issues of good governance, and that there is many ways to achieve improvement of governance. She is not convinced that a state requirement will help the complex issue. She expresses concern about patch-work requirements among the states.

**Cory Sbarbaro (Nancy Bell Evans Center)** agrees with Carol Lewis' comment. He suggests that the audit requirement apply to organizations that fall under titles 19.09 and 23.04. He also asks that the group acknowledge the limited capacity of boards; he notes that having a group of people within the board to serve as an audit committee is a little unrealistic.

**David Brown (Pacific Northwest Ballet)** states that, in general, financial review or audit is a goal many organizations aspire to. He encourages the Secretary of State's Office and the Office of the Attorney General to update the documents available on-line regarding the fine line between the legal responsibility of the board member and role of the board member in the organization.

**Alaric Bien (Chinese Information and Service Center)** questions the purpose of the audit requirement. He states that he does not understand what the current problem is.

**Audience Member** notes that as a consultant to nonprofits, she informs organizations every couple of years about new requirements for nonprofit organizations. She asks if this requirement is something that is within the State of Washington or if the Office of the Secretary of State is working with other states, so that, for organizations that file, there are not onerous rules placed on organizations filing in different states.

**Mike Ricchio (OSOS)** notes that Rebecca Sherrell is a member of the National Association of State Charities officials, which is discussing a process to streamline filing requirements in multiple states. He also notes that multi-state issues are being discussed at various levels of government. He notes that the Office of the Secretary of State is concerned that the public is not well informed about the financial situation of the organization through an independent, third party review.

**Coe Morgan (Daylight Masonic Lodge)** suggests that the discussion has gotten off track. He asks what is wrong with a million dollar threshold. He notes that if he donates to the Seattle Symphony, he expects an audit by the organization, but if he donates to a smaller organization like Theater Schmeater, he expects a production.

**Audience Member** notes that there is a clear distinction between earned income and funds raised.

**Audience Member** asks if there is a triggering mechanism that does not work currently. He asks if a member of the public calls the Office of the Secretary of State with a complaint is the Secretary of State frustrated because they need information that is not available. He questions if there is a problem at all.

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**Rebecca Sherrell (OSOS)** explains that the Office of the Secretary of State's Charities Program receives a variety of public complaints; harassment and being contacted by a solicitor after registering on the do not call list are some of the most common. She notes that if someone calls to report a fraud, the Charities Program refers the complaint to the Attorney General's Office for enforcement. She notes that the office receives thousands of IRS Form 990s, and that her staff can only look at them to a certain degree. Because of this, she believes that having a third party, like a CPA, fill out the IRS Form 990 would aid in building public trust.

**Audience Member** asks if there is a chance to have the person who complains to pay for the audit.

**Rebecca Sherrell (OSOS)** responds that currently there is not.

**Eric Walker (PATH)** expresses concern that the wording in the draft is not proportional to what the Office of the Secretary of State is expecting. He suggests "total expenditures" as a phrase rather than "total revenue." He suggests that financial review be the term used and that the Office of the secretary of State should work with the AICPA and the Executive Alliance to define the scope of work for a financial review.

**Secretary of State Sam Reed** asks if "total solicited funds" is a better solution.

**Audience Member** suggests that "total solicited funds" is the best option. He also notes that fees for an audit vary widely; requiring a financial review, not an audit, would de-pressurize the stress of an audit. He also notes that he hopes that "audit" does not become a political term to keep up with other states.

**Mary E. Gates (Federal Way Symphony)** notes that the discussion has not talked about endowment and the effect of how this law will affect growth. She wonders if organizations will avoid growing to avoid the audit requirement. She also expresses concern about donor dollars because donors do not like high overheads, and by requiring an audit, there are going to be higher overhead costs.

**Audience Member** from an organization that is right at the \$1 million threshold offers a snapshot of what the organization has done to get ready to complete an audit. She notes that the range of services is enormous, and the organization has had difficulty deciphering what services are available and the requirements of the organization. She comments that the most helpful step that the organization took was getting a CPA on the board of the organization. She suggests that having a CPA on the board is far more productive than inheriting a law like this that is so ill defined.

**Secretary of State Sam Reed** suggests discussing issues that are not addressed in the legislation.

**Susan Trapnell (ACT Theater)** asks that if boards are intended to be the protector to the public, what the purpose of the legislation is. She also notes that nonprofit organizations are value based

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organizations, not profit based. She suggests that this legislation is attempting to gain public trust by giving the public a financial snapshot, not by whether the organization is fulfilling its mission. She notes that the health and survival of the organization is not based on finances but on how well the organization balances achieving the mission with costs. She suggests that this legislation will not help accountability of board members because improving board accountability can only be done on an individual basis. She suggests that the legislation is an appearance to improve transparency.

**Dennis Smith (United Way Snohomish County)** encourages that funds for enforcement go more towards proactive education. He also suggests that boards of directors attend training for best practices and good governances. He also suggests putting links to free IRS Form 990 review sites on the Office of the Secretary of State's website. He also offers to share a recent United Way survey of donors. He states that donor's number one concern is that they are not sure the dollars they give make a difference.

**Lynn Schrader (Daniel J. Evans School of Public Affairs)** suggests that public education is a huge need and access for the public to the registration form might not be suitable for the legislation, but a good strategy to consider for the implementation of the legislation.

**Carolyn Hojaboom (Moss Adams)** notes that through the discussion today, she has had a clarifying thought. She suggests that having the IRS Form 990 filled out by a third party is an efficient and economical way of encouraging financial review. She notes that this would be more affordable than an audit. She suggests that public education is important but also having good education for the Staff of the Secretary of State is important, too. She suggests that there is some confusion in the office about term usage. She encourages the Office of the Secretary of State to work with accountants and CPAs that prepare IRS Form 990.

**Coe Morgan (Daylight Masonic Lodge)** asks what the legislation would do for fraternal organizations like the Masons.

**Rebecca Sherrell (OSOS)** notes that the legislation would probably apply. She notes that the term "charitable" is very broad; any organization – whether nonprofit or not – that solicit funds for a charitable cause falls under the qualifications of 19.09.

**Putnam Barber (Executive Alliance)** suggests that the legislation should apply to soliciting organizations, not charities. He suggests changing the running word "charity" in the legislation. He also notes that many similar laws are on the books in 39 other states. He thinks it would be a good opportunity for Washington State to be a leader in making a real contribution for improving the accountability for organizations not just in Washington State, but also for organizations that solicit funds from Washington residents, but are located outside of the state. This coordination would also alleviate an additional burden for states registering in multiple states.

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**Howard Donkin (Jacobson Jarvis)** asks how things can be done better. He notes that the discussion is about compliance today; he asks how to make sure organizations are doing what they need to be doing. He questions what makes good compliance. He suggests that the answer to compliance is more staffing in the Office of the Secretary of State. He suggests that having more staff will process IRS form 990 better. He also asks how to get the Attorney General's Office more involved. He recommends referencing the Eden Report (2004).

**Eric Schinfield (Puget Sound Regional Council)** echoes the earlier comment that the nonprofit sector is value based not profit based. He encourages a qualitative measurement so that the public can see that the organization is financially sound and mission sound.

**Jim English (Vashon Maury Island Community Council)** states that he is not entirely convinced that there is a problem. He cautions moving too quickly and taking care not to compound regulation so that it becomes inflexible. He suggests that the Office of the Secretary of State is walking a "tight rope" of enforcement, while sending the message of public trust.

**Audience Member** notes that she is not convinced that there is a problem. She suggests to be cautious and sure that there is a problem to work on through this legislation. She also suggests that by hosting these roundtable gatherings, the idea that there is a problem gets introduced to the public.

**Cherie Evans (Evans and Rosen, LLP)** expresses concern about having terminology, particularly a definition of revenue, in the legislation that is too unique and too specific because it will raise fear and cause nonprofit organizations to hire a lawyer to make sure the organization understands the terminology.

**Shane Hamlin (OSOS)** asks, in reference to a conversation at the roundtable in Tacoma, how the attendees feel about raising the registration fee from \$10 - 20 to increase education.

**Audience Member** encourages raising the fee for more education. She notes that there is fear in the sector around the idea of the audit. She suggests that organizations are already struggling from a lack of funds available because of the difficulty raising money today. She notes that organizations are realizing that the few funds available should go towards the mission of the organization. She asks if the legislation could be postponed 5 or 10 years when finances for the missions of the organization are not as tight.

**David Brown (Pacific Northwest Ballet)** encourages "arts organizations" to be added to the section on page 3.

**Chris Charbonneau (Planned Parenthood)** acknowledges that education discussion is positive. She also encourages more general punishment rather than individual punitive measures for the board.



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**Audience Member** also encourages an educational approach rather than a legislative “big stick” approach.

**Bitsy Bidwell (WA State Arts Commission)** asks about using the capacity that the state has in its technology resources (like providing a link to IRS Form 990 on the website) for education. She acknowledges that the state has really been a leader in this area.

**Tom Bangasser (Island Chamber of commerce)** asks about public trust. He notes that the disposable incomes of people that want to share in their community are the same population of people that do not want to be bogged down with additional paperwork. He suggests that this population really wants their dollars to be at work in their communities. He notes that as a culture, we are very generous. As such, he comments that this legislation is going in the wrong direction by monitoring boards rather than increasing public trust. He notes that the Office of the Secretary of State should not use the federal government as a marker of where to keep state requirements in line. He notes that by reporting on the negative side of the issue encourages the public to keep their donation dollars. He suggests focusing on results because audits do not necessarily tell the public if the organization is spending too much on compensation, travel, etc.

**Audience Member** suggests focusing on the donors for education. She suggests that donors need the tools to know the difference between IRS Form 990 and an audit (for example).

**Judy Andrews (Gottlieb, Fisher, and Andrews)** informs attendees that she conducts a variety of community education resource workshops about what is required for organizations. She notes that having an educational component would be a great benefit to Washington State.

**Audience Member** notes that the public just wants to know what an organization is doing with their dollars. She notes the education should also include something about what is included in overhead and administrative costs versus how money for the mission is spent.

**Secretary of State Sam Reed** thanks attendees, noting that the comments have been very helpful. He encourages attendees to continue to communicate with the Office of the Secretary of State. He thanks Josephine Tamayo Murray and Put Barber again for their coordination in the roundtable. He notes that the next roundtables will be held in Vancouver, Spokane, and the Tri-Cities. Secretary Reed informs attendees that the minutes from those roundtables will be posted on the website.

**Roundtable adjourned.**